

## REMARKS

Reconsideration of this application is respectfully requested. Claims 1-19 are pending.

Claims 1-19 stand rejected in the Office Action mailed March 14, 2003.

Claims 1, 5-6, 9-10, 13-16, and 19 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,378,132 to Grandin, et al. ("Grandin").

Claims 2-3, 7, 11 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Grandin in view of the alleged knowledge in the art.

Claims 4, 8, 12 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Grandin in view of U.S. Patent No. 6,154,600 to Newman, et al. ("Newman").

### 37 C.F.R. §1.131 Declaration of December 27, 2002 ("Lienhart Declaration")

The Examiner has stated that the Declaration filed on 27 December 2002 is ineffective to overcome the Grandin reference. The Examiner has stated in part that "*Exhibit B merely provides evidence how to analyze the characteristics of a microphone, and thus applicant has not shown a reduction to practice.*" (Final Office Action, 3/14/03, p. 2) Applicants respectfully disagree.

37 C.F.R. §1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter, including "reduction to practice of the invention prior to the effective date of the reference...." The 37 C.F.R. §1.131 declaration must establish possession of either the whole invention claimed or something falling within the claim... in the sense that the claim as a whole reads on it. *In re Tanczyn*, 347 F.2d 830 (CCPA 1965). Furthermore, a 37 C.F.R. §1.131 affidavit is not insufficient merely because it does not show the identical disclosure of the reference(s) or the identical subject matter involved in the activity relied upon. If the affidavit contains facts showing a completion of the invention commensurate with the extent of the invention as claimed is shown in the reference, the declaration is sufficient, whether or not it is a showing of

the identical disclosure of the reference or the identical subject matter involved in the activity. See *In re Wakfield*, 422 F.2d 897 (CCPA 1970); MPEP §715.02).

Exhibit B of the Lienhart Declaration is a printout of the source code (main.cpp) that demonstrates an actual reduction to practice of the invention claimed by applicants prior to Grandin's effective date of May 20, 1999. (Lienhart Declaration, p.2, par. 5) Although Exhibit B at page 1, includes a comment line that states "This file generates synthetic sinusoids in order to analyze the characteristic of a microphone," such comment does not negate the fact that functions within the source code of Exhibit B establish that the applicants had possession of the invention claimed. As examples, some functions include:

"int cancelNoise" (Exhibit B, pp. 2-3),

"int ConvolveAudioBuffer" (Exhibit B, p. 2),

"int writeTestWaveFile" (Exhibit B, p. 3),

"bool generateStatistics" (Exhibit B, p. 4).

Many additional functions are contained within Exhibit B that further establish applicants' possession of the invention as claimed.

The Examiner also states in part, that, "*the evidence submitted is insufficient to establish diligence.... There is no evidence provided by the Applicant in the critical period.*" (Final Office Action, 3/14/03, p. 2) Although the Examiner properly states what is required when an applicant is the first to conceive, but the last to reduce to practice, it is respectfully submitted that applicants are not in that situation. Applicants submit that, the Lienhart Declaration establishes that the applicants had an actual reduction to practice prior to Grandin's earliest date. Therefore, diligence need not be shown.

For these reasons, applicants submit that the Lienhart Declaration overcomes the Grandin reference, thus placing the applicants' claims in condition for allowance. Furthermore, if the claims are not allowed, applicants request that the finality of the Examiner's rejection be withdrawn.

## CLAIM REJECTIONS

### Rejections under 35 U.S.C. §102(e)

The Examiner has rejected claims 1, 5-6, 9-10, 13-16, and 19 under 35 U.S.C. §102(e) as being anticipated by Grandin. Applicants submit that claims 1, 5-6, 9-10, 13-16, and 19 are not anticipated by Grandin. Applicants have previously submitted a Declaration under 37 C.F.R. §1.131, which demonstrates an earlier invention date than the effective date of Grandin as discussed above. Thus, Grandin is not prior art to the present invention.

### Rejections Under 35 U.S.C. §103

The Examiner also rejected claims 2-3, 7, 11, and 17 under 35 U.S.C. §103(a) as being unpatentable over Grandin and alleged knowledge in the art. Claims 2-3, 7, 11, and 17 are patentable under 35 U.S.C. §103 in view of the reference cited by the Examiner. Applicants have previously submitted a Declaration under 37 C.F.R. §1.131, which demonstrates an earlier invention date than the effective date of Grandin as discussed above. Thus, Grandin is not prior art to the present invention.

The Examiner rejected claims 4, 8, 12 and 18 under 35 U.S.C. §103(a) as being unpatentable over Grandin in view of Newman. Claims 4, 8, 12 and 18 are patentable under 35 U.S.C. §103 in view of the reference cited by the Examiner. Applicants have previously submitted a Declaration under 37 C.F.R. §1.131, which demonstrates an earlier invention date than the effective date of Grandin as discussed above. Thus, Grandin is not prior art to the present invention.

Applicants respectfully submit that all rejections have been overcome. Consideration of this amendment should lead to favorable action that would overcome all remaining grounds of

objection and/or rejection. Furthermore, applicants request that if the claims are not allowed, that the finality of the Examiner's rejection should be withdrawn.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

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